

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Darries Sherrills,	:	
	:	
Plaintiff	:	Civil Action 2:06-cv-00485
	:	
v.	:	Judge Sargus
	:	
Terry collins, <i>et al.</i> ,	:	Magistrate Judge Abel
Defendants	:	
	:	

REPORT AND RECOMMENDATION

Plaintiff Darries Sherrills, a prisoner at the Marion Correctional Institution, has filed a complaint alleging that he has been provided negligent medical care and that he has been reqd to make a \$3 co-payment for medical care in violation of the Ohio Administrative Code. This matter is before the Magistrate Judge on Sherrills' August 8, 2006 motion to proceed *in forma pauperis*. (Doc. 12.) Sherrills' affidavit in support of the motion states that on five previous occasions he has filed suits that have been dismissed as frivolous, malicious or failing to state a claim.

Three Strikes. Under the provisions of 28 U.S.C. § 1915(g) a prisoner who "has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted," cannot proceed *in forma pauperis* "unless the prisoner is under imminent danger of serious physical injury." The prisoner must be "under imminent danger of serious physical harm" at the time the complaint is filed, not at the time of the actionable events. *Abdul-Akbar v. McKelvie*, 239

F.3d 307, 314 (3d Cir. 2001); *Medberry v. Butler*, 185 F.3d 1189, 1192-93 (11th Cir. 1999); *Ashley v. Dilworth*, 116 F.3d 715, 717 (8th Cir. 1998); *Banos v. O'Guin*, 144 F.3d 883, 884-85 (5th Cir. 1998).

Here Sherrills has had more than three previous suits dismissed as frivolous or failing to state a claim, and he does not allege that he is in imminent danger of serious physical harm. Consequently, the Magistrate Judge RECOMMENDS that plaintiff Daries Sherrills' August 8, 2006 motion to proceed *in forma pauperis* (doc. 12) be DENIED.

If any party objects to this Report and Recommendation, that party may, within ten (10) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. *See* 28 U.S.C. §636(b)(1)(B); Fed. R. Civil. P. 72(b).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *Thomas v. Arn*, 474 U.S. 140, 150-152 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Small v. Secretary of Health and Human Services*, 892 F.2d 15, 16 (2d Cir. 1989).

s/Mark R. Abel
United States Magistrate Judge